



Crl.A.(MD)No.29 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.03.2023

CORAM

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.A.(MD)No.29 of 2016

Suresh

... Appellant

Vs.

Inspector of Police
Karaikudi North Police Station,
Karaikudi (Crime No.209/2008),
Sivagangai district.

... Respondent

PRAYER : Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, to call for records and set aside the order of conviction and sentence passed in S.C.No.78 of 2011 dated 20.01.2016 on the file of the learned Session Judge, Fast Tract Mahila Court, Sivagangai and allow this appeal and acquit the appellant / accused from the charge levelled against him.

For Appellant : Mr. T.Selvan

For Respondent : Mr.T.Senthilkumar
Additional Public Prosecutor



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ORDER

This Criminal Appeal has been filed to set aside the order of conviction and sentence passed in S.C.No.78 of 2011 dated 20.01.2016 on the file of the learned Session Judge, Fast Tract Mahila Court, Sivagangai.

2.The case of the prosecution is that the appellant got married with the deceased on 24.05.2004. Thereafter, they lived as joint family along with his parents. The appellant was running travel business and possessed a taxi. During marriage, the deceased was presented with 50 sovereigns gold jewels, one 2 wheeler, household articles and other sridhana articles. After marriage, without knowledge of the deceased, the appellant pledged 25 sovereigns of gold jewels and also sold out two wheeler. Thereafter, the appellant demanded a car, for that purpose, the deceased family sold out two wheeler and gave money. Thereafter, the appellant also sold out the remaining 25 sovereigns of gold jewels. The appellant also harassed the deceased and committed cruelty on the



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deceased. Again, they demanded huge dowry and as such, the deceased on 10.05.2008 committed suicide by hanging herself.

3. Based on the complaint, the respondent registered FIR in Cr. No.209 of 2008 under Section 174 Cr.P.C. After receipt of the report from the Executive Magistrate, the respondent altered the offence into Sections 498(A), 306 IPC. After completion of investigation, the respondent filed final report and the same has been taken cognizance by the trial Court in S.C.No.78 of 2011. In order to bring the charges to home, the prosecution examined P.W.1 to P.W.14 and marked Ex.P.1 to Ex.P10. The prosecution also produced material object-1. On the side of the accused, no one was examined and no document was marked.

4. On perusal of oral and documentary evidence, the trial Court found the appellant guilty for the offence punishable under Sections 498(A), 306 IPC. The trial Court acquitted A2 and A3. The appellant was sentenced to undergo three years rigorous imprisonment and to pay fine of Rs.1,000/- in default to undergo three months rigorous imprisonment for the offence punishable under Section 498(A) IPC. He



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was also sentenced to undergo 5 years rigorous imprisonment and to pay fine of RS.5,000/- in default to undergo six months rigorous imprisonment for the offence punishable under Section 306 IPC. Aggrieved over the same, the appellant preferred the present appeal.

5.The learned counsel appearing for the appellant would submit that the suicide note of the deceased was marked as Ex.P.7 and it does not implicate the appellant as an accused in any manner. It is completely against the case of the prosecution. The appellant got married with the deceased on 24.05.2004 and till the alleged occurrence, there was absolutely no dispute between them and no complaint was lodged either by the deceased or by her family members. Therefore, no offence is made out under Section 498(A) IPC and absolutely there is no material either oral or document to convict the appellant under Section 498(A) IPC. The prosecution failed to examine independent witness to prove charge under Section 498(A)IPC. Insofar as charge under Section 306 IPC is concerned, there is no evidence to show that the appellant abetted and instigated to commit suicide. In fact, there is nothing in the suicide note to charge under Section 306 IPC.



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6.Per contra, the learned Additional Public Prosecutor appearing for the respondent police would submit that P.W.1 to P.W.5 categorically and cogently deposed as against the appellant. The mother of the deceased was examined as P.W.1 and she deposed that during marriage, they presented 50 sovereigns of gold jewels and also two wheeler as dowry. Thereafter, without knowledge of the deceased, the appellant had sold away 25 sovereigns of gold jewels and subsequently, 25 sovereigns also pledged. Two wheeler, which was presented during marriage, was also sold out by the appellant, without knowledge of the deceased. There was demand of huge dowry and as such, the deceased committed suicide by hanging herself. One of the neighbor was examined as P.W.11 and she deposed that when the deceased and the appellant were living as her neighbor, the deceased used to complain about the demand of huge dowry by the appellant and his family members. Further, in the suicide note the deceased clearly stated that “don't fight”, which shows that there was quarrel between them. In fact, postmortem report also revealed that injuries found in her forehead and thigh. P.W.9, who conducted enquiry, opined that there were possibilities for dowry demand and due to which,



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she committed suicide. Therefore, prosecution categorically proved its case beyond any doubt and the trial Court rightly convicted the petitioner and it does not warrant any interference by this Court.

7.Heard both sides and perused the materials available in the record.

8.There are totally three accused, in which the appellant is arrayed as A1. The appellant got married with deceased on 24.05.2004. During the marriage, they were presented 50 sovereigns of gold jewels, two wheeler and other household articles. Immediately after their marriage, the appellant had sold out 25 sovereigns of gold jewels without knowledge of the deceased. He also sold out two wheeler, which was presented during marriage. Subsequently, he pledged remaining jewels also. That apart, there was demand of huge dowry and thereby, harassed the deceased. Therefore, on 10.05.2008 in the matrimonial home, she committed suicide by hanging herself.



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9.Prosecution examined the mother of the deceased as P.W.1 and she deposed that approximately the appellant pledged 25 sovereigns of jewels and she did not say the particulars of jewels, which was allegedly pledged by the appellant. She did not know as to whom the jewels were pledged. She also admitted that till her death, no complaint was lodged for the allegation of demand of dowry and cruelty allegedly committed by the appellant. She also could not able to say when was the two wheeler sold and also did not know as to whom it was sold. When the deceased was giving birth to the second child, the entire expenses was borne by the appellant's family and the deceased's parents have not taken care of the deceased. In the cross-examination, she said that over phone, the deceased complained about the harassmt and cruelty. However, in the chief examination, she specifically stated that the deceased had no phone.

10.The prosecution had examined the sister of the deceased as P.W.2. She deposed that two wheeler, which was allegedly presented to the appellant, was purchased in the name of one of her father's friend. Therefore, without signature of RC book holder, the vehicle cannot be



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sold out in favour of third person. She also admitted that when the appellant and his family members demanded Rs.2,00,000/- to open two wheeler show room, no amount was given by the deceased family to the appellant. Therefore, the prosecution failed to prove that the appellant had sold away 25 sovereigns of gold jewels, without knowledge of the deceased and also failed to prove that the appellant had pledged the remaining jewels. Admittedly, there was no complaint based on cruelty and demand of huge dowry till the death of the deceased. In fact, the Executive Magistrate conducted enquiry and opined that there was possibility for dowry demand. However, there is no charge for demand of dowry as against the appellant. Therefore, the prosecution failed to prove the charge under Section 498(A) IPC.

11.Insofar as charge under Section 306 IPC is concerned, the prosecution mainly relied upon Ex.P.7 suicide note, which reads as follows:

என் சாவுக்கு யாரும் காரணம் இல்லை

என்னை மன்னித்து விடுங்கள். யாரு யாருடனும் சண்டை போடக்கூடாது. திரும்ப திரும்ப சொல்கிறேன் யாரும் யாருடனும் சண்டை போடக்கூடாது. என் பிள்ளைகளை என் அம்மா அப்பா



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கேட்டல் கொடுக்கவும். இது என்னுடைய கை எழுத்துதான்.

It revealed that no one was responsible for her death. She also sought for apology and she requested not to quarrel with anybody. She also suggested to give custody of her children to her parents. Therefore, the suicide note had nothing to attract any allegation to satisfy the ingredients of the charge under Section 306 IPC as against the appellant. In order to prove the charge under Section 306 IPC, it requires abetment to commit suicide. “Abetment” has been defined under Section 107 of the Indian Penal Code, which reads as follows:-

107. Abetment of a thing.—A person abets the doing of a thing, who— First.—Instigates any person to do that thing; or Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing.

In the case on hand, there is absolutely no material available as against the appellant to attract the offence under Section 306 IPC. Therefore, the prosecution failed to prove both charges under Sections 498(A), 306 IPC in order to sustain the conviction against the appellant.



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12.In view of the above, the conviction and sentence imposed by the trial Court is hereby set aside and the accused is acquitted. If any bail bond is executed by the appellant, the same shall be returned. Accordingly, this criminal appeal is allowed.

30.03.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

- 1.The Session Judge,
Fast Tack Mahila Court, Sivagangai.
- 2.The Inspector of Police,
Karaikudi North Police Station,
Karaikudi, Sivagangai district.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

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